

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARTHA R. CUNNINGHAM,

Plaintiff,

v.

WALGREEN CO.,

Defendant.

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CIVIL ACTION NO.

SA-07-CV-0769 NN

ORDER DENYING MOTION TO DISMISS

This order denies defendant Walgreen's motion to dismiss.¹ Walgreen's filed its motion on January 7, 2008 and asked the court to dismiss Cunningham's claims for want of prosecution. In the motion, Walgreen complained that Cunningham failed to answer its interrogatories and failed to respond to its requests for production. Because I was uncertain about whether Cunningham understood the consequences of not responding, I instructed Cunningham about the necessity of responding and extended the time for a response.²

Since that time, Cunningham responded to Walgreen's motion.³ Cunningham filed what appears to be her answers to Walgreen's interrogatories and documents responsive to Walgreen's request for production.⁴ The response, however, does not indicate whether Cunningham served a copy of her response on Walgreen's attorney. Nevertheless, the response indicates that

¹Docket entry # 19.

²Docket entry # 20.

³Docket entry # 25.

⁴See exhibits to docket entry # 25.

Cunningham intends to prosecute her case, so dismissal on failure-to-prosecute grounds is inappropriate. I DENY Walgreen's motion to dismiss (docket entry # 19). I ORDER Cunningham to serve a copy of her response by March 12, 2008 on Walgreen's attorney, if she has not already done so. This deadline will permit Walgreen to obtain the Cunningham documents in sufficient time to file a dispositive motion.⁵

SIGNED on March 6, 2008.

A handwritten signature in cursive script, reading "Nancy Stein Nowak", written over a horizontal line.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE

⁵The deadline for filing dispositive motions is April 7, 2008. See docket entry # 11.